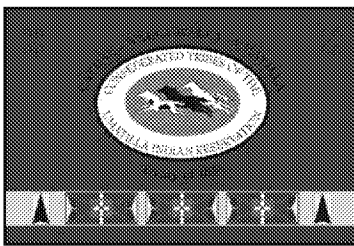


**Confederated Tribes of the
Umatilla Indian Reservation**

Department of Natural Resources
Administration



46411 Timine Way
Pendleton, OR 97801

www.ctuir.org tearafarrowferman@ctuir.org
Phone 541-276-3165 Fax: 541-276-3095

November 2, 2018

Mr. David Anderson
DEQ Eastern Region, Bend Office
475 NE Bellevue Drive, Suite 110
Bend, OR 97701

Transmitted via Email: anderson.david@deq.state.or.us and duval.rich@deq.state.or.us

RE: Comment on Class 3 Permit Modification Request for Incorporation of the Organic Recovery Unit 2 Tanks into the Chemical Waste Management of the Northwest Hazardous Waste Permit ORD 089 452 353

Dear Mr. Anderson:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) appreciates the opportunity to comment on the proposed Class 3 Permit Modification Request for incorporation of the Organic Recovery Unit 2 Tanks into the Chemical Waste Management (CWM) of the Northwest Hazardous Waste Permit ORD 089 452 353. At the outset, the CTUIR DNR disagrees with the determination that Organic Recovery Unit 2 (ORU-2) is exempt from Resource Conservation and Recovery Act (RCRA) permitting under 40 CFR 262.6(a)(3)(iv)(C). Because the unit treats hazardous waste and potentially emits toxics to the atmosphere, the Oregon Department of Environmental Quality (ODEQ) must either amend the existing CWM permit or issue a new permit for ORU-2 so that it is subject to the standards for a "miscellaneous unit" under 40 CFR 264, Subpart X.

In your January 24, 2018, memorandum on this matter, ODEQ referenced the determination that ORU-2 is exempt from RCRA permitting under 40 CFR 262.6(a)(3)(iv)(C) without a complete analysis of what is being processed at the facility or what is being released into the environment. Unfortunately, this cursory determination is an abdication of the responsibility of ODEQ to prevent the release of toxics into the environment and causes an undue risk of endangering human health. In our discussions with ODEQ, the CTUIR posed the question of whether ODEQ could regulate this facility if it was emitting a pound of mercury per hour. The answer from ODEQ was no. This position is contrary to the fundamental purpose for which RCRA was adopted. As confirmed by the Supreme Court of the United States:

RCRA's primary purpose ... is to reduce the generation of hazardous waste and to ensure the proper treatment, storage, and disposal of that waste which is nonetheless generated, "so as to minimize the present and future threat to human health and the environment." 42 U.S.C. § 6902(b).¹

¹ *Meghrig v. KFC Western, Inc.*, 516 U.S. 479, 483 (1996).

The CTUIR DNR is concerned that by classifying ORU-2 solely as a recycling unit pursuant to 40 CFR 262.6(a)(3)(iv)(C), ODEQ would be allowing it to operate with no upper limit on emissions of mercury, lead, cadmium, arsenic, beryllium, chromium, carbon monoxide, hydrocarbons, dioxins, furans, hydrochloric acid, chlorine gas and particulate matter.² RCRA's recycling unit exemption is not intended, nor should ODEQ interpret it, to allow carte blanche emission of hazardous air pollutants simply because one purpose of ORU-2 is the recycling of hazardous waste.³ These emissions should be subject to regulation and limited by the application of best available control technology pursuant to RCRA Subpart X and the Clean Air Act (CAA) 40 CFR 63 Subpart EEE standards. Otherwise, ODEQ is not meeting its obligation to minimize the threat to human health and the environment.

The CTUIR DNR has sought to gain a more complete understanding of the nature of the CWM facility and its potential impacts on the CTUIR, its members, and the resources on which we depend. We have reviewed many of the documents from ODEQ. We conducted a conference call on September 6, 2018, with ODEQ to discuss this proposed permit modification and held an in-person meeting with CWM representatives on October 4, 2018. The CTUIR signed a Non-Disclosure Agreement in October with CWM in an attempt to obtain and review documentation of the chemical characterization of the waste streams coming into the facility; however, CWM provided only summaries of the mercury concentrations of these waste streams. We have found that there is no public information available regarding what hazardous materials have been treated by ORU-2 nor what has been released into the atmosphere by ORU-2. There is no mass balance of what comes in and what goes out of the facility. In essence, neither the CTUIR nor ODEQ has the full scope of information necessary to evaluate the potential or actual emissions from the facility.

The CTUIR has also learned that neither the generators of the waste nor CWM is legally obligated to test or monitor for all the hazardous wastes in the material going through the recycling process, including the type of mercury that may be released from the ORU-2 stack. This is alarming. In our call with ODEQ, it was stated that CWM only needs to test and monitor for the specific hazardous materials which may leach out of the waste rather than those that can be emitted into the atmosphere by incineration in the thermal oxidizer. Monitoring for hazardous materials such the type of mercury that could be vaporized and emitted to the atmosphere by the thermal oxidizer is voluntary and may not be consistently performed. This is another example of why exempting the facility from the Subpart X regulations is both ill-advised and potentially injurious to human health.

² For the record, the CTUIR is concerned not only about mercury, but all the hazardous constituents of the waste stream; we have consistently requested characterization of the entire waste stream, not just mercury concentrations. Beyond mercury, the presence of organic chlorine in the waste stream is deeply concerning. Chlorine, from our understanding, will not be removed by the Thermal Desorption Unit (TDU) and will likely be emitted as hydrochloric acid after incineration by the thermal oxidizer. The quantities of chlorine in the waste stream are currently unknown to us but we understand that the amounts may be significant.

³ Assuming, for the sake of argument, that the primary purpose of ORU-2 is "recycling" of hazardous wastes, that is *not* its *exclusive* purpose. It also incinerates a portion of those wastes—a form of treatment—resulting not in total destruction but in diminishment (or transformation of those wastes into another form) and the eventual emission and dispersal of some residual amount of them into the environment.

ORU-2 treats hazardous waste through a process that recovers oil from the waste stream and as such arguably “recycles” the oil. The remaining hazardous components of this waste stream cannot escape the regulatory oversight of ODEQ or EPA merely because they are associated with recycled material or a recycling process. In order for ORU-2 to qualify for a recycling exclusion or exemption under RCRA, ODEQ must determine that the recycling is legitimate under 40 CFR 260.43. In order to do so, ODEQ must undertake an examination of the feedstocks that are coming into the facility to ensure that *all* hazardous components contained in the feedstocks are legitimately recycled, or that any non-recycled hazardous components are regulated and disposed of consistently with otherwise applicable RCRA requirements. To date, it is our understanding that ODEQ has not undertaken this examination to ensure that the wastes meet the standards under § 260.43.

It is also the CTUIR DNR’s understanding that ORU-2 is designed such that once the oil has been recycled from the incoming feedstock, the thermal oxidizer incinerates the residual components, some of which are RCRA-listed hazardous wastes. This step appears to involve an incinerator that should be regulated under RCRA Subpart X and CAA Subpart EEE. Attached are two letters from EPA Region 6 as well as a consent decree regulating a facility substantially similar to ORU-2, reaching the conclusion that Subparts X and EEE apply, described as follows:

- In the first letter, dated May 2, 2016 to Mr. J.D. Head of Fritz, Byrne, Head & Fitzpatrick, EPA Region 6 concluded that the “thermal treatment of the vent gas requires a RCRA permit.” To date ODEQ has not given a reasoned explanation of why this is not the case for CWM other than relying upon the failure of EPA Region 6 and Region 10 to respond to requests for information on the point. The reasoning in EPA’s May 2, 2016 letter lays out several logical justifications for treating the thermal oxidizer on ORU-2 as requiring an RCRA permit. The thermal oxidation meets the definition of an incinerator of the waste products in the recycling process under 40 CFR 260.10 *after* the recycling has occurred. In the materials provided regarding the CWM application from ODEQ, the thermal oxidizer is identified as ME-1601 in the diagram in Appendix B, Organic Recovery Unit #2 Design and Operations Plan, Standalone Doc. No. 22.
- The second EPA letter, dated June 24, 2016 to Mr. Estuardo Silva of the Louisiana Department of Environmental Quality (LDEQ) regards a draft hazardous waste operating and post closure permit for Chemical Waste Management, Inc. This letter to LDEQ is a follow up to the May 2, 2016 letter noted above. It explains in detail why the process would be subject to the RCRA 40 CFR Part 264 Subpart X and CAA 40 CFR Part 60 Subpart EEE standards.
- The Consent Decree is for US Ecology Texas, Docket Number RCRA-06-2012-0936 and RCRA-06-2012-0937. This Consent Decree specifically discusses the thermal destruction of non-condensable gasses in a combustion chamber, concluding that “[t]he burning of gasses in the TDU’s combustion chamber constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10]. Consent Decree page 10.
- Also attached is a September 21, 2018 letter from Region 10 EPA regarding the CWM Class 3 Permit Modification inquiring whether ODEQ “considered whether a 40 C.F.R. Part 264, Subpart X permit would be appropriate...” The letter acknowledges the issue of national consistency on this point, but specifically included the May 2, 2016 letter discussed above to ODEQ.

In our conversations with ODEQ, it was indicated that this facility will likely come under the new Cleaner Air Oregon (CAO) rules if they are adopted, and would thus potentially require permit modification to address the toxic emissions pursuant to the additional requirements. If that is the case, ODEQ should incorporate the relevant CAO provisions into the draft permit now. The Oregon Environmental Quality Commission (EQC) is meeting in two weeks to discuss this. If the rules are adopted, they will be effective upon filing with the Secretary of State as early as a few days after the EQC meeting. Clearly it is more logical to wait two weeks to determine if the permitting of CWM is going to be under a different regime than it is now rather than issue a modification that will only need to be amended at a later date. Furthermore, CWM indicated that it will be approximately a year, at least, until they will have data on the actual emissions of ORU-2. It is more sensible to anticipate and incorporate the new standards that will apply to the facility into the permit now rather than continue to wait for data and analyses that may become available at some uncertain future time. Finally, based on the CAO rules ODEQ will undertake a high-level waste screening of the materials from specific waste producers and their attributes. The CTUIR hopes that the relative isolation of the CWA site does not weigh against a determination it nevertheless may have a high potential to impact the state lands and waters that support Treaty-reserved rights and resources. We hope that the potentially substantial toxicity of the releases and serious impacts on tribal populations are weighted appropriately, along with other factors.

Because the facility oxidizes hazardous wastes after recycling the petroleum-based products has occurred, the remainder of the process is not subject to the 40 CFR 262.6(a)(3)(iv)(C) exemption. CWM and ODEQ can either choose to regulate the thermal oxidizer under Subpart X or issue a permit for the entire process as was originally proposed in October, 2015. Additionally, Chemical Waste Management should be required under 40 CFR 63 Subpart EEE to conduct a comprehensive performance test to demonstrate compliance with the emissions standards and to establish limits on operating parameters (such as feed rates and TDU operating temperature) to ensure continued compliance.

The CTUIR DNR is very concerned about the potential implications of ODEQ employing a more permissive interpretation of the scope of RCRA's recycling exemption than EPA Region 6. Specifically, if the CWM Arlington facility is able to dispose of oil—and anything else it may happen to contain—at a significantly lower cost than similar facilities in Region 6 by asserting the recycling exemption, oil refineries in Region 6 (and elsewhere) may have a sufficient financial incentive to ship their used oil to Arlington for disposal, either by truck or rail. Aside from the potential hazardous emissions associated with the increased processing of oil at the Arlington facility, the CTUIR is deeply concerned about the potential for increased oil (or oil refinery waste) train traffic. There would also be an increase in burning of fossil fuels and spill risks associated with shipment of spent oil to Arlington. Rail transport would also be most likely to occur directly through the Umatilla Indian Reservation (UIR), as the major rail and highway transportation routes from Region 6 to Arlington pass directly through the UIR.

Unfortunately, CWM has indicated that they will not be able to provide any data regarding the emissions from ORU-2 for approximately one year as such sampling will reportedly require facility modification, development of a testing regime, conducting the testing and producing the results. CWM has been operating the ORU-2 unit for over a year, yet ODEQ has not comprehensively

CTUIR DNR Letter to David Anderson

Subject: Class 3 Permit Modification Request for ORU-2 at CWM, Arlington

November 2, 2018

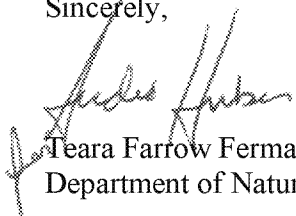
Page 5 of 5

analyzed what is coming into the unit and what is coming out. ORU-2 has processed hundreds of thousands of tons of hazardous waste and neither ODEQ nor CWM knows or understands the fate of all of the constituent hazardous wastes. This is deeply disturbing to the CTUIR, as the ORU-2 unit processes hazardous wastes that can impact human health as well as the environment. Unless and until ODEQ fully understands what is being emitted by the facility, the CTUIR DNR cannot support ODEQ in simply taking the word of CWM that there is no danger to public health. While portions of ORU-2 may be exempt from review under the CAA Subpart EEE standards, the thermal oxidation of non-condensable material is subject to regulation as was concluded by EPA Region 6. The facility should not be operating unless and until it can demonstrate compliance with applicable RCRA regulations.

Finally, Eastern Oregon has more than its share of environmental threats and degradation. We are home to numerous Confined Animal Feeding Operations such as Threemile Canyon Farms with approximately 100,000 cows and their enormous ammonia and methane emissions to the state's only coal-fired power plant, both in the vicinity of Boardman (27 miles from Arlington). There are also multiple agricultural processing facilities around Boardman that impact air quality as well. We will be enduring the many dangerous legacies of the Hanford Nuclear Reservation for centuries to come, and were once the site of 15% of the nation's chemical weapons stockpile (now thankfully gone). Impacts to air quality by unregulated emissions from a hazardous waste treatment facility not only endangers the citizens of Eastern Oregon, but the ecosystems upon which those people depend. CWM Arlington is in close proximity to the Columbia River and its air emissions have the potential to be carried down-river to the Columbia River Gorge National Scenic Area.

Thank you for your consideration of our comments. They incorporate by reference those of the Columbia River Inter-Tribal Fish Commission with whom we have worked on this this proposed. The CTUIR DNR requests additional meetings with ODEQ, potentially on a government-to-government level, to discuss these comments and how the issues they raise may be resolved. Please contact Audie Huber, DNR Intergovernmental Affairs Coordinator, at 541-429-7228 to schedule a meeting.

Sincerely,



Teara Farrow Ferman, Interim Director
Department of Natural Resources

Cc: Christine Svetkovich, ODEQ

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 Ross Avenue
Dallas, Texas 75202-2733

2 MAY 2016

Mr. J.D. Head
Fritz, Byrne, Head & Fitzpatrick, PLLC
221 West 6th Street
Suite 960
Austin, Texas 78701

Dear Mr. Head:

Thank you for your October 30, 2015 letter requesting clarification of the hazardous waste regulatory standards for thermal desorption units (TDUs) installed at RCRA treatment, storage, and disposal facilities (TSDFs). I apologize for the delay in responding to your request. In your scenario, the TDU reclaims oil from oil bearing hazardous wastes generated by petroleum refining, production, or transportation practices. You describe a TDU as a device that heats solid material to vaporize, remove, and separate organic constituent materials from solids. In the scenario you describe at a TSDF, the separated organic constituents are typically condensed and recovered as a liquid oil. The TDU process also generates a vent gas after the condensing stream.

Your inquiry also references 40 C.F.R. § 261.6(a)(3)(iv)(C)¹, which provides that:

Oil reclaimed from oil-bearing hazardous waste from petroleum refining, production, or transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the used oil specification under 40 C.F.R. § 279.11 is not subject to regulation under 40 C.F.R. Parts 262 – 268, 270, or 40 C.F.R. Part 124, and is not subject to the notification requirements of Section 3010 of RCRA.

If the above conditions are met, then the reclaimed oil can be burned as a non-hazardous fuel. If the oil-bearing hazardous waste is not from petroleum refining, production, or transportation practices, then the reclaimed oil is subject to RCRA regulation.

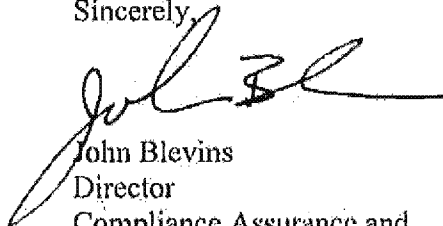
If a TDU combusts all or a portion of the vent gas, combustion of the TDU vent gas from RCRA hazardous waste or recyclable materials [40 C.F.R. § 261.6(a)(1)] is considered thermal treatment that is regulated by RCRA. The material being treated (oil-bearing hazardous waste) is already a hazardous waste. Heating hazardous wastes to a gaseous state is subject to regulation under RCRA as treatment of hazardous waste, and thermal treatment after a material becomes a hazardous waste is fully regulated under RCRA. 54 Fed. Reg. 50968, 50973 (December 11, 1989). Thus, thermal treatment of the vent gas requires a RCRA permit.

¹ Since you did not reference a specific State in which your client may operate a TDU, this letter cites to the applicable federal regulations. If the State has an authorized RCRA program, the corresponding state regulation would be applicable.

If the vent gas is combusted in the combustion chamber of the TDU, then a permit under 40 C.F.R. Part 264, Subpart O is required, because the TDU would meet the definition of incinerator in 40 C.F.R. § 260.10 (an enclosed device that uses controlled flame combustion). If, on the other hand, the vent gas is vented to and combusted in a thermal oxidizing unit (TOU), the permitting authority may be able to permit the entire unit (TDU and TOU) as a miscellaneous unit under 40 C.F.R. Part 264, Subpart X. A RCRA permit would be required even if the facility is operating as a RCRA exempt recycling activity under 40 C.F.R. § 261.6(a)(3)(iv)(C). If the permitting authority decides to issue a 40 C.F.R. Part 264, Subpart X permit, the permitting authority is required to include in the permit requirements from 40 C.F.R. Part 264, Subparts I through O, AA, BB, and CC, 40 C.F.R. Part 270, 40 C.F.R. Part 63, Subpart EEE, and 40 C.F.R. Part 146 that are appropriate for the miscellaneous unit being permitted as required in 40 C.F.R. § 264.601. The decisions as to what appropriate requirements would be included in the permit would be left to the permitting authority. However, EPA would expect that the permit conditions would be similar to those set forth in the enclosed Consent Agreement and Final Order, In Re: US Ecology Texas, Inc. and TD*X Associates, LP, EPA Docket Nos. RCRA-06-2012-0936 and RCRA-06-2012-0937, filed October 4, 2012.

If you have any questions, please feel free to contact Guy Tidmore of my staff at (214) 665-3142 or via e-mail at tidmore.guy@epa.gov.

Sincerely,



John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

Cc: Penny Wilson, ADEQ
 Lourdes Iturralde, LDEQ
 John Kieling, NMED
 Mike Stickney, ODEQ
 James Gradney, TCEQ



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 Ross Avenue
Dallas, Texas 75202-2733

JUN 24 2016

Mr. Estuardo Silva
Louisiana Department of Environmental Quality
Office of Environmental Services
Waste Permits Division
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313

RE: Draft Hazardous Waste Modified Operating and Post Closure Permit
Chemical Waste Management, Inc.
7170 John Brannon Road
Carlyss, LA 70665
Permit# LAD00077201-OP-RN-MO-1
AI# 742/PER20140007

Dear Mr. Silva:

EPA has the following comments on the draft Hazardous Waste Operating and Post Closure Permit for the Chemical Waste Management, Inc. facility located at 7170 John Brannon Road, Carlyss, LA 70665 (Draft Permit). Chemical Waste Management, Inc. (Chem Waste) seeks to add two oil recovery units (ORUs), two thermal desorber units (TDUs), and 19 associated tanks to its operations at its Carlyss, Louisiana facility. The ORUs will be utilized to separate recoverable oils from drilling fluids, refinery tank bottoms, commercially exempt waste, and other non-hazardous and hazardous waste. The TDUs will treat contaminated tank bottoms, sludge, catalyst slurry oil, and other non-hazardous and hazardous waste. The TDUs will be designed to separate organic constituents from a waste stream by condensing the organic components, which would allow for the recovery or disposal of the contaminants. The non-condensable gases will be routed to a thermal oxidizer unit (TOU). The TDU is proposed to be permitted as a miscellaneous unit.

Condition II.E.25.e of the Draft Permit provides that "[o]ne hundred and eighty (180) days before planned construction, the Permittee must submit finalized engineering specifications and operating parameters for the proposed Thermal Desorber Units to the Administrative Authority for approval. The information submitted must comply with the requirements of this permit and L.A.C. 33:V. Chapter 32, and all applicable regulations." Chapter 32 is entitled "Miscellaneous Units", and is the State equivalent of 40 C.F.R. Part 264, Subpart X. Due to the absence of any proposed engineering specifications, performance test, operating conditions, operating parameters, monitoring and recordkeeping requirements, we have identified permit requirements for the TDU and TOU below that we believe are required by the regulations for operation of the TDU and TOU.

How the TDU and TOU are permitted determine the appropriate permit requirements for the units. The material being treated in the TDU and the TOU is already a hazardous waste. Thermal treatment after a material becomes a hazardous waste is fully regulated under RCRA, 54 Fed. Reg. 50968, 50973 (December 11, 1989). The combustion of the non-condensable gases in the TOU meets the

definition of "thermal treatment" in L.A.C. 33:V.109 [40 C.F.R. § 260.10] and thus requires a RCRA permit. The TOU would meet the definition of incinerator in L.A.C. 33:V.109 [40 C.F.R. § 260.10] (an enclosed device that uses controlled flame combustion). However, rather than permitting the TOU as an incinerator, LDEQ could permit the TDU and TOU together as a miscellaneous unit under L.A.C. 33:V. Chapter 32 [40 C.F.R. Part 264, Subpart X]. If this occurs, then LDEQ is required to include in the permit requirements from L.A.C. 33:V. Chapters 3, 5, 7, 17, 19, 21, 23, 25, 27, 29, 31, 4301.F, H, 4302, 4303 and 4305, all other applicable requirements of L.A.C. 33:V. Subpart 1, and of 40 C.F.R. Part 63, Subpart EEE and 40 C.F.R. Part 146, that are appropriate for the miscellaneous unit being permitted.¹

The decisions as to what appropriate requirements would be included in the permit would be left to LDEQ. However, we believe that the permit conditions would be similar to those set forth in the enclosed Consent Agreement and Final Order, In Re: US Ecology Texas, Inc. and TD*X Associates, LP, EPA Docket Nos. RCRA-06-2012-0936 and RCRA-06-2012-0937, filed October 4, 2012. These permit conditions would include, but not be limited to: 1) a startup, shutdown, and malfunction plan; (2) a performance test, which includes meeting a 99.99% destruction removal efficiency for each principle organic hazardous constituent and meeting certain emission limits; (3) automatic waste feed cutoff system; (4) operating parameters; and (5) investigation, recordkeeping, testing, and reporting requirements. This position was also previously communicated to LDEQ in a letter from EPA to Mr. J. D. Head dated May 2, 2016, in which a copy was sent to LDEQ. A copy of this letter is also enclosed.

If you have any questions, please feel free to call me at (214) 665-8022.

Sincerely,



Susan Spalding
Associate Director
Hazardous Waste Branch (6MM-R)
Multimedia Division

Enclosure

¹ The equivalent Federal provisions are 40 C.F.R. Part 264, Subparts I through O, AA, BB, and CC, 40 C.F.R. Part 270, 40 C.F.R. Part 63, Subpart EEE, and 40 C.F.R. Part 146. 40 C.F.R. § 264.601.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2012 OCT -4 AM 9:20
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:)

US ECOLOGY TEXAS, INC., and)
TD*X ASSOCIATES LP)

RESPONDENTS)
_____)

DOCKET NOS. RCRA-06-2012-0936
and RCRA-06-2012-0937

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and US Ecology Texas, Inc. and TD*X Associates L.P. (Respondents) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondents admit the jurisdictional allegations contained herein; however, the Respondents neither admit nor deny the specific factual allegations contained in this CAFO.

4. The Respondents explicitly waive any right to contest the allegations and their right to appeal the proposed Final Order set forth therein, and waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

6. The Respondents consent to the issuance of the CAFO hereinafter recited and consent to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. US Ecology Texas, Inc. (USET) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

8. TD*X Associates LP (TD*X) is a limited partnership authorized to do business in the State of Texas.

9. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2], and Section 1004(5) of RCRA, 42 U.S.C. § 6903(15) as "an individual, corporation, organization, government or government subdivision or agency, business trust, partnership, association, or any other legal entity."

10. The Respondent USET is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903(15).

11. The Respondent TD*X is a “person” as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

12. “Owner” is defined in 30 T.A.C. § 335.1(108) [40 C.F.R. § 260.10] as “the person who owns a facility or part of a facility.”

13. “Operator” is defined in 30 T.A.C. § 335.1(107) [40 C.F.R. § 260.10] as “the person responsible for the overall operation of a facility”.

14. “Owner or operator” is defined in 40 C.F.R. § 270.2 as “the owner or operator of any facility or activity subject to regulation under RCRA.”

15. “Facility” is defined in 30 T.A.C. § 335.1(59) [40 C.F.R. § 260.10] as meaning “all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).”

16. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Road 69, Robstown, TX 78380, EPA I.D. No. TXD069452340, Permit No. HW-50052-001.

17. The TSD identified in Paragraph 16 is a “facility” as that term is defined in 30 T.A.C. § 335.1(59) [40 C.F.R. § 260.10].

18. The Respondent USET is the “owner” and/or “operator” of the facility identified in Paragraph 16, as those terms are defined in 30 TAC § 335.1(107) & (108) [40 C.F.R. § 260.10] and 40 C.F.R. § 270.2.

19. An oil reclamation unit is located at the facility identified in Paragraph 16.

20. The Respondent TD*X owns and operates a thermal desorption unit (TDU), as well as the feed preparation system that includes a shaker tank (T-30), three mix tanks (T-31, T-32, and T-33), a centrifuge, and a surge tank (T-34) at the oil reclamation unit.

21. The Respondent TD*X began operating the TDU and related equipment on or about June 15, 2008.

22. On or about June 8 – 11, 2010, June 14 – 17, 2010, and August 9 – 11, 2010, the Respondent USET's TSD facility and the oil reclamation unit were inspected by representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

B. VIOLATIONS

Count One – Processing Hazardous Waste Without a Permit or Interim Status

23. Pursuant to Sections 3005(a) and (c) of RCRA, 42 U.S.C. §§ 6925(a) and (c), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment),¹ storage, or disposal of hazardous waste.

24. “Hazardous waste” is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as “any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*”

25. “Recyclable materials” is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as “hazardous wastes that are recycled”.

¹ The Texas Administrative Code uses the term “processing” instead of “treatment”. The term “processing” as used by Texas is essentially equivalent to the term “treatment” as used in the federal statute and regulations.

26. The Respondent USET receives “hazardous waste” from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

27. The Respondent USET receives “recyclable materials” from off-site generators, as that term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)].

28. Recyclable materials destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

29. Processing (treatment) is defined in 30 T.A.C. § 335.1(122) [40 C.F.R. § 260.10] as follows:

The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

30. On various dates after June 15, 2008, certain recyclable materials were processed in the tanks identified in Paragraph 20.

31. The recyclable materials identified in Paragraph 30 did not meet the exemption in 30 T.A.C. § 335.24(c)(4)(C) [40 C.F.R. § 261.6(a)(3)(iv)(C) because the hazardous wastes were not “oil-bearing hazardous wastes from petroleum refining, production, and transportation practices.”

32. The Respondent TD*X processed (treated) hazardous waste as that term is defined in 30 T.A.C. § 335.1(122) [40 C.F.R. § 260.10] in the tanks identified in Paragraph 20.

33. To date, neither the Respondent USED nor Respondent TD*X has applied for nor received a RCRA permit or interim status to allow the processing (treatment) of hazardous waste in the tanks identified in Paragraph 20.

34. Therefore, the Respondent USET and the Respondent TD*X have violated Sections 3005(a) and (c) of RCRA, 42 U.S.C. §§ 6925(a) and (c), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by processing (treating) hazardous waste without a RCRA permit or interim status.

Count Two – Processing Hazardous Waste Without a Permit or Interim Status

35. Pursuant to Sections 3005(a) and (c) of RCRA, 42 U.S.C. §§ 6925(a) and (c), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

36. “Hazardous waste” is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as “any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*”

37. “Recyclable materials” is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as “hazardous wastes that are recycled”.

38. The Respondent USET receives “hazardous waste” from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

39. The Respondent USET receives “recyclable materials” from off-site generators, as that term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)].

40. Recyclable materials destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

41. On various dates after June 15, 2008, certain recyclable materials were fed into the TDU that did not meet the exemption in 30 T.A.C. § 335.24(c)(4)(C) [40 C.F.R. § 261.6(a)(3)(iv)(C)] because the hazardous wastes were not “oil-bearing hazardous wastes from petroleum refining, production, and transportation practices.”

42. Processing (treatment) is defined in 30 T.A.C. § 335.1(122) [40 C.F.R. § 260.10] as follows:

The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

43. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10] as follows:

the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air

oxidation, and microwave discharge. (See also “incinerator” and “open burning.”).

44. The TDU uses heat from an indirect heated rotary dryer to separate the organic constituents from the hazardous waste feed material. A nitrogen carrier gas is used to transfer the vapor phase organic constituents to a gas treatment system. The oil is recovered by condensing vapor phase organic constituents in the gas treatment system. A portion of the TDU’s recirculating nitrogen carrier gas, along with non-condensable gases, is vented, filtered, and then injected into the combustion chamber of the TDU, where it is burned.

45. The separation of the organic constituents from the hazardous waste in the TDU’s indirectly heated rotary dryer constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

46. To date, neither the Respondent USET nor Respondent TD*X has applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in the TDU.

47. Therefore, the Respondent USET and the Respondent TD*X have violated Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste without a RCRA permit or interim status.

Count Three - Processing Hazardous Waste Without a Permit or Interim Status

48. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

49. “Hazardous waste” is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as “any solid waste identified or listed as a hazardous waste by the administrator of the United States

Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901

et seq.”

50. The Respondent USET receives “hazardous waste” from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

51. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

52. On various dates after June 15, 2008, hazardous wastes were fed into the TDU.

53. The TDU uses heat from an indirect heated rotary dryer to separate the organic constituents from the hazardous waste feed material. A nitrogen carrier gas is used to transfer the vapor phase organic constituents to a gas treatment system. The oil is recovered by condensing vapor phase organic constituents in the gas treatment system. A portion of the TDU’s recirculating nitrogen carrier gas, along with non-condensable gases, is vented, filtered, and then injected into the combustion chamber of the TDU, where it is burned.

54. Processing (treatment) is defined in 30 T.A.C. § 335.1(122) [40 C.F.R. § 260.10] as follows:

The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in

accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

55. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149)

[40 C.F.R. § 260.10] as follows:

the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also “incinerator” and “open burning.”)

56. The burning of gases in the TDU’s combustion chamber constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149)

[40 C.F.R. § 260.10].

57. The combustion chamber of the TDU is an enclosed device that uses controlled flame combustion.

58. The combustion chamber of the TDU does not meet the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; nor meets the definition of infrared incinerator or plasma arc incinerator.”

59. To date, neither the Respondent USET nor Respondent TD*X has applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in the combustion chamber of the TDU.

60. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (c) of RCRA, 42 U.S.C. §§ 6925(a) and (c) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste without a RCRA permit or interim status.

Count Four – Storing Hazardous Waste Without a Permit Or Interim Status

61. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

62. “Storage” is defined in 30 T.A.C. § 335.1(143) [40 C.F.R. § 260.10] as “the holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere.”

63. Between on or about March 9, 2010, and June 11, 2010, the Respondent USET stored roll-off boxes in the area called the “Y” at the facility.

64. The roll-off boxes identified in Paragraph 63 contained material which had entered the oil reclamation process and was being temporarily staged before undergoing subsequent stages of the reclamation process. The Respondent USET discontinued the use of the area called the “Y” for this purpose.

65. “Hazardous waste” is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as “any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*”

66. The roll-off boxes identified in Paragraph 63 contained “hazardous waste” as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

67. The Respondent USET had not applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste at the area called the “Y”.

68. Therefore, the Respondent USET has violated Sections 3005(a) and (c) of RCRA, 42 U.S.C. §§ 6925(a) and (c), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by storing hazardous waste without a RCRA permit or interim status.

III. COMPLIANCE ORDER

69. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondents are hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Interim Operating Requirements

1. As of the effective date of this CAFO, feedstock for the oil reclamation unit shall consist only of non-hazardous waste, and oil-bearing hazardous waste from petroleum refining, production, and transportation practices. Oil-bearing hazardous waste from petroleum refining, production, or transportation practices includes the following listed hazardous waste from specific Petroleum Refining Sources (K049, K050, K051, K052, K169, and K170). Also acceptable is oil-bearing hazardous waste from processes which meet the definition of the following Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) as follows:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site	213112	Support Activities for Oil and Gas Operations

	preparation and related construction activities performed on a contract or fee basis)		
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from processes meeting the definition of the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate determination whether the hazardous waste in question is “oil-bearing,” and that the hazardous waste was originally generated from petroleum refining, production, or transportation practices.

3. As of the effective date of this CAFO, when the dryer feed is on, the Respondents shall operate the TDU in accordance with the interim operating parameters set forth in Appendix 1, Table A, which is attached and incorporated by reference into this CAFO. The Blending Protocols referenced in Appendix 1 is attached as Appendix 2, and incorporated by reference into this CAFO.

4. As of the effective date of this CAFO, Respondents shall comply with the Start-Up, Shutdown, and Malfunction Plan (SSM Plan) (CDT Plan, Appendix E). The Compliance Demonstration Test (CDT) Plan is attached as Appendix 3 and incorporated by reference into the CAFO.

5. Within sixty (60) days of the effective date of this CAFO, the Respondents shall conduct a tune-up of the external combustion chamber of the TDU in accordance with the following requirements:

a. As applicable, inspect the burner and clean or replace any components of the burner as necessary. The burner inspection may be delayed until the next scheduled or unscheduled unit shutdown.

b. Inspect the flame pattern, as applicable, and adjust the burner as necessary to optimize the flame pattern. The adjustment should be consistent with the manufacturer's specification.

c. Inspect the system controlling the air-to-fuel ratio, as applicable, and ensure that it is correctly calibrated and functioning properly.

d. Optimize total emissions of carbon monoxide (CO). This optimization should be consistent with the manufacturer's specifications, if available.

e. Measure the concentrations in the effluent stream of CO in parts per million, by volume, and oxygen in volume percent, before and after the adjustments are made.

Measurements may be either on a dry or wet basis, as long as it is the same basis before and after the adjustments are made.

f. Perform sampling and analysis of both dryer furnace stacks using Method TO-15, "Determination of Volatile Organic Compounds (VOCs) In Air Collected In Specially-Prepared Canisters And Analyzed By Gas Chromatography/Mass Spectrometry (GC/MS)". If the total

organic matter result is greater than 10 ppmV for either stack, the analysis shall include speciation of the gas. This information shall be included in the report required in Paragraph 69.A.5.g below.

g. Maintain on-site a report documenting the concentrations of CO in the effluent stream in parts per million by volume, and oxygen in volume present, measured before and after the adjustments of the external combustion chamber of the TDU, and a description of any corrective actions taken as part of the combustion adjustment.

h. Subsequent tune-ups shall be conducted annually until the TDU is reconfigured.

6. Within sixty (60) days of the effective date of this CAFO, the Respondents shall conduct a fuel specification analysis of the purge vent gas for mercury and document that it does not exceed the maximum concentration of 40 micrograms/cubic meter of mercury using test methods ASTM D5954, ASTM D6350, ISO 6978-1:2003(E), or ISO 6978-2:2003(E), or an alternate test method approved by EPA. If the concentration of mercury exceeds 40 micrograms/cubic meter, the Respondents shall immediately notify EPA.

7. Within ninety (90) days of the effective date of this CAFO, the Respondents shall install, monitor, and operate an automatic hazardous waste feed cutoff (AWFCO) at the TDU in accordance with 40 C.F.R. § 63.1206(c)(3)(ii) and (iv) that immediately and automatically cuts off the hazardous waste feed when any component of the AWFCO system fails, or when one or more of the interim operating parameters set forth in Appendix 1, Table A that are designated as AWFCO parameters are not met. The Respondents shall also comply with the investigation, recordkeeping, testing, and reporting requirements of 40 C.F.R. § 63.1206(c)(3)(v), (vi) and (vii).

8. Within one year of the effective date of this CAFO, the Respondents shall reconfigure the TDU so that the non-condensable vent gases are routed to a thermal oxidizing unit (TOU)

instead of the combustion chamber of the TDU (Reconfigured TDU). After reconfiguration, fuel for the TDU is limited to natural gas and propane.

9. The Respondents shall operate the Reconfigured TDU during the shakedown period in accordance with the operating parameters limits set forth in Appendix 1, Table B when the dryer feed is on. The Respondent shall not operate the Reconfigured TDU more than 720 hours (including the shakedown period and the Compliance Demonstration Test). The Respondents shall keep records of the hours of operation during the shakedown period. The Respondents shall operate a continuous emissions monitor system (CEMS) for carbon monoxide (CO) for the TOU during the shakedown period. The Respondents shall operate the Reconfigured TOU in a manner that the hourly rolling averages for CO are not exceeded. The rolling averages shall be calculated in accordance with 40 C.F.R. §§ 63.1209(a)(6) and 63.1209(b)(5).

10. During the shakedown period, the Respondents shall monitor and operate an automatic hazardous waste feed cutoff (AWFCO) at the Reconfigured TDU in accordance with 40 C.F.R. § 63.1206(c)(ii) and (iv) that immediately and automatically cuts off the hazardous waste feed when any component of the AWFCO system fails, or when one or more of the operating parameter limits set forth in Appendix 1, Table B that are designated as AWFCO parameters are not met. The Respondents shall also comply with the investigation, recordkeeping, testing, and reporting requirements of 40 C.F.R. § 63.1206(c)(3) (v), (vi) and (vii).

11. The Respondents shall conduct a test measuring the concentration of CO in the exhaust gases from the TOU. This test shall include three one-hour runs during which the TDU is operated on oil-bearing hazardous waste. The emissions from the TOU stack shall be monitored for carbon monoxide and oxygen using EPA Method 10. The emissions shall be

demonstrated to be less than 100 ppmV CO corrected to 7% O₂ in each run. The test frequency shall be once during each six-month period, January 1 – June 30 and July 1 - December 31, said time period to commence after conducting the CDT and continuing until the TCEQ issues a RCRA Subpart X permit for the Reconfigured TDU. Within forty-five (45) days after conducting the test, the Respondents shall submit a test report to EPA summarizing the test results. The time periods for conducting the test may be changed to once during each twelve (12) month calendar period, January 1 - December 31, if the Respondents submit to EPA, with a copy to TCEQ, a detailed feed stream analysis plan that characterizes the waste received by the facility, and EPA approves the plan. The detailed feedstream analysis plan shall be prepared in accordance with 40 C.F.R. § 264.13 and the EPA Guidance Document “Waste Analysis At Facilities That Generate, Treat, Store, And Dispose of Hazardous Waste”, OSWER 9938.4-03 (April 1994). The Respondents will implement the detailed feedstream analysis plan, as approved or modified by EPA, immediately upon receipt of EPA’s approval.

12. The Respondents shall prepare a report for the time period beginning on the effective date of this CAFO and ending June 30, 2013, and every six (6) months thereafter. The report shall be submitted to EPA, with a copy to TCEQ, within thirty (30) days of the end of the reporting period. The report shall include the following:

a. For each waste stream accepted by the oil reclamation unit, identify the customer, original generator, waste stream description, RCRA waste codes, the SIC or NAICS code of the process generating the waste, a summary of any analyses conducted by the Respondents to verify the waste stream profiles, and the total volume of waste accepted during the reporting period. If requested by EPA, the Respondents shall provide copies of relevant waste approval documents and manifests for the specific waste streams.

b. All time periods in which there were exceedances of the operating parameters and the AWFCO requirements set forth in Appendix 1, Tables A and B, and exceedances of the hourly rolling averages for CO (Paragraph 69.A.9).

c. All exceedances of the Reconfigured TDU Compliance Standards and the AWFCO requirements established in accordance with Paragraph 69.C.9.

d. The initial Report shall include documentation showing that the tune-up and fuel specification analysis required by Paragraphs 69.A.5 and 69.A.6 have been conducted, and provide documentation showing the date of installation and subsequent operation of the AWFCO system required by Paragraphs 69.A.7.

e. Documentation showing the installation of the TOU required by Paragraph 69.A.8, and the additional AWFCO requirements required by Appendix 1, Table B (Paragraph 69.A.10).

The Report may be submitted in an electronic format (i.e., compact disk). The Respondents may claim the report as confidential business information (CBI), in accordance with the requirements of 40 C.F.R. Part 2. However, information that is emissions data or a standard or limitation cannot be claimed as CBI. 40 C.F.R. § 2.301(e). If the Report contains any information that is claimed CBI, the Respondents shall provide a redacted version with all CBI deleted.

B. RCRA Permit Modification

1. Within one year of the effective date of this CAFO, the Respondents shall submit to TCEQ, with a copy to EPA, an application for a Class 3 RCRA Permit Modification to permit the Reconfigured TDU as a miscellaneous unit under 40 C.F.R. Part 264, Subpart X in accordance with 30 T.A.C. § 335.152(a)(16) [40 C.F.R. Part 264, Subpart X], 30 T.A.C. Chapter 305 [40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33].

2. The permit application shall also include relevant requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC, 40 C.F.R. Part 270, and 40 C.F.R. Part 63, Subpart EEE that are appropriate for the operation of the Reconfigured TDU, including an engineering report, waste analysis, monitoring and inspection requirements, and closure requirements set forth in 30 T.A.C. § 335.152(a)(13) [40 C.F.R. §§ 264.341, 264.347, and 264.351].

3. The Respondents shall also request that the issued RCRA permit modification include the following:

- a. The feedstock limitations applicable to the operation of the oil reclamation unit under 40 C.F.R. § 261.6(a)(3)(iv)(C) set forth in Paragraph 69.D;
- b. The investigation, recordkeeping, testing, and reporting requirements of 40 C.F.R. § 63.1206(c)(3) (v), (vi) and (vii);
- c. Appropriate recordkeeping and reporting requirements; and
- d. Any applicable risk-based terms and conditions necessary to protect human health and the environment.

4. The failure to timely submit a Class 3 Permit Modification to TCEQ and EPA within the deadline set forth in Paragraph 69.B.1 shall result in the termination of the Respondents' authorization to operate the Reconfigured TDU on that date unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

5. By no later than three and one-half years (42 months) from the effective date of this CAFO, the Respondents must complete all permitting requirements and obtain issuance from the TCEQ of a final RCRA Subpart X permit for the TDU as a Subpart X – Miscellaneous Unit in accordance with 30 T.A.C. § 335.152(a)(16) [40 C.F.R. Part 264, Subpart X], 30 T.A.C. Chapter 305 [40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33], and which

incorporates the appropriate requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC, 40 C.F.R. Part 270, and 40 C.F.R. Part 63, Subpart EEE. In the event that TCEQ does not issue a RCRA Subpart X permit for the Reconfigured TDU as described above by the above deadline, the Respondents' authorization to operate the Reconfigured TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

C. Compliance Demonstration Test

1. The Respondents shall perform a compliance demonstration test (CDT) in accordance with the approved CDT Plan, which is attached as Appendix C and incorporated by reference into the CAFO. The CDT requires the Respondents to demonstrate compliance with the emissions limits of 40 C.F.R. § 63.1219(b) set forth in Paragraph C.5, the destruction and removal efficiency standard of 40 C.F.R. § 63.1219(c)(1) set forth in Paragraph C.4, and establish limits for the operating parameters set forth in Paragraph 69.C.6 (Appendix 1, Table C).

2. Within sixty (60) days of the effective date of this CAFO, the Respondents shall submit to EPA for approval, with a copy to TCEQ, a Quality Assurance Project Plan (QAPP) for the CDT. The QAPP shall be prepared in accordance with the EPA Region 6 Guidance "Quick Reference Guide, Test Burn Program Planning for Hazardous Waste Combustion (HWC) Units" dated August 6, 2012. The Respondents shall implement the QAPP as approved or modified by EPA.

3. The Respondents shall implement the CDT in accordance with Appendix 3 within ninety (90) days after reconfiguration of the TDU pursuant to Paragraph 69.A.8 of this CAFO.

4. During the CDT, the Respondents must achieve a destruction and removal efficiency (DRE) of 99.99% for toluene, the designated principle organic hazardous constituent (POHC). The DRE shall be calculated in accordance with 40 C.F.R. § 63.1219(c)(1).

5. The emission limits that must be met during the CDT are set forth in 40 C.F.R. § 63.1219(b).
6. The operating parameters limits that will be established during the CDT are set forth in Appendix I, Table C.
7. The Respondents must not exceed the emission limits set forth in 40 C.F.R. § 63.1219(b), and must achieve a DRE of 99.99% for toluene [as set forth in 40 C.F.R. § 63.1219(c)] for all three runs in order to have a successful CDT. If the Respondents determine, based on the results of analyses of stack samples, that they have exceeded any emission standard or failed to meet the DRE requirement during any of the three runs, they must immediately cease processing hazardous waste in the Reconfigured TDU. The Respondents must make this determination within forty-five (45) days following completion of the CDT. The Respondents may not resume operation of the Reconfigured TDU until the Respondents have submitted and received EPA approval of a revised CDT plan, at which time operations can resume to demonstrate compliance with the emission limits and DRE requirements during all of the three runs.
8. All analyses required by the CDT plan shall be performed by a NELAC accredited laboratory or by a laboratory pre-approved by TCEQ.
9. Within ninety (90) days from completion of the CDT, the Respondents shall submit a CDT Report to EPA and TCEQ prepared in accordance with requirements in the CDT Plan, documenting compliance with the DRE standard and emission limits set forth in Paragraphs 69.C.4 and 69.C.5, and identifying operating parameter limits and AWFCO settings for the parameters set forth in Appendix I, Table C. The DRE standard, emission limits, operating parameter limits, and the AWFCO settings shall also be set forth in a separate Appendix entitled

“Reconfigured TDU Compliance Standards”. All data collected during the CDT (including, but not limited to, field logs, chain-of-custody documentation, monitoring data, sampling and analytical results, and any other data or calculations supporting the emissions calculations or operating parameter limits) must be submitted to EPA and TCEQ as part of the CDT Report. However, information in the CDT Report that is emissions data or a standard or limitation cannot be claimed as CBI. 40 C.F.R. § 2.301(e). If the Report contains any information that is claimed CBI, the Respondents shall provide a redacted version with all CBI deleted.

10. As of the date of the submission of the CDT Report, the Respondent shall comply with all operating requirements set forth in the “Reconfigured TDU Compliance Standards”, unless otherwise notified by EPA.

11. EPA will review the CDT Report. EPA will make a finding concerning compliance with the emissions standards, DRE requirements, and other requirements of the CDT. If EPA determines that the Respondents have met all the requirements, it shall issue a Finding of Compliance to the Respondents. If EPA determines that the Respondents did not meet all of the requirements, it shall issue a Finding of Non-Compliance. Subject to Paragraph 69.C.7 of this CAFO, the issuance of a Finding of Non-Compliance by EPA shall result in the termination of the Respondents’ authorization to operate the Reconfigured TDU on that date.

12. The failure to timely submit a CDT Report to EPA and TCEQ within ninety (90) days from completion of the CDT shall result in the termination of the Respondents’ authorization to operate the Reconfigured TDU on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

D. Compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

1. Unless the TDU and the tanks identified in Paragraph 20 are authorized by the RCRA Permit Modification required by Section III.B of this CAFO (or any subsequent permit amendment) to receive wastes that do not meet the requirements set forth in 40 C.F.R. § 261.6(a)(3)(iv)(C), feedstock for the oil reclamation unit shall consist only of non-hazardous waste, and oil-bearing hazardous waste from petroleum refining, production, and transportation practices. Oil-bearing hazardous waste from petroleum refining, production, or transportation practices includes the following listed hazardous waste from specific Petroleum Refining Sources (K049, K050, K051, K052, K169, and K170). Also acceptable is oil-bearing hazardous waste from processes which meet the definition of the following Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) as follows:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products

4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

Nothing in this Section III.D shall be construed to preclude Respondents from seeking authorization from the TCEQ to process oil-bearing materials outside the scope of 40 C.F.R. § 261.6(a)(3)(iv)(C). However, the definition of oil-bearing hazardous waste from petroleum refining, production, or transportation practices set forth in this Paragraph shall remain the same.

2. Using feedstock from processes meeting the definition of the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate determination whether the hazardous waste in question is “oil-bearing,” and that the hazardous waste was originally generated from petroleum refining, production, or transportation practices. The Respondents shall request that this provision be placed in the issued RCRA permit as applicable to the oil reclamation unit operation under 40 C.F.R. § 261.6(a)(3)(iv)(C).

E. TCEQ Submission, Revision, and Approval Process

1. For the Class 3 RCRA Permit Modification required be submitted to TCEQ for approval under this CAFO, TCEQ will review the application in accordance with 30 T.A.C.

§§ 281.3(c), 281.18 and 281.19(a) and (b). The Respondents must respond to any Notice of Deficiency (NOD), with a copy to EPA, within the time period specified by the TCEQ. In the event that the Respondents fail to submit a timely and complete NOD response, the Respondents' authorization to operate the TDU shall terminate on the NOD response deadline unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

F. Additional Conditions

1. To comply with this CAFO, the Respondents must obtain a RCRA permit for the TDU as a Subpart X – Miscellaneous Unit in accordance with 30 T.A.C. § 335.152(a)(16) [40 C.F.R. Part 264, Subpart X], 30 T.A.C. Chapter 305 [40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33], and which incorporates the appropriate requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC, and 40 C.F.R. Part 270, and 40 C.F.R. Part 63, Subpart EEF.

2. The Respondents may seek relief under the provisions of Section IV.F of this CAFO (Force Majeure) for any delay in the performance of any such obligations resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Respondent has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or approval.

G. EPA Review and Comment on RCRA Permit

1. Nothing in this CAFO shall limit EPA's rights under applicable environmental laws or regulations, including, but not limited to, Section 3005(c)(3) of RCRA, 42 U.S.C. § 6925(c)(3), 40 C.F.R. § 270.32 and 40 C.F.R. § 271.19, to review, comment, and incorporate appropriate requirements of 40 C.F.R. Parts 264, Subparts I through O and Subparts AA through CC, and

40 C.F.R. Part 63, Subpart EEE directly into the permit or establish other permit conditions that are based on those parts; or take action under Section 3008(a)(3) of RCRA, 42 U.S.C.

§ 6928(a)(3), against the Respondents on the ground that the RCRA permit for the Reconfigured TDU does not comply with a condition that the EPA Region 6 Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the issued permit. If the Respondent disputes an action taken by EPA pursuant to 40 C.F.R. § 270.32 or 40 C.F.R. § 271.19, the Defendant may invoke Dispute Resolution in accordance with Section IV.E of this CAFO.

H. Submissions

In all instances in which this Compliance Order requires written submissions to EPA and TCEQ, each submission must be accompanied by the following certification:

“I certify under penalty of law to the best of my knowledge and belief, that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

All submissions must be certified on behalf of the Respondent(s) by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

I. Monitoring, Recordkeeping, and Record Retention Requirements

1. Upon the effective date of this CAFO, all interim operating parameters (Appendix 1, Table A), shakedown operating parameters (Appendix 1, Table B), and final operating parameters limits (Appendix 1, Table C and Paragraph 69.C.6) subject to AWFCO limits shall be monitored by the facility's Continuous Process Monitoring System (CPMS), which records data once per minute in an electronic data log (DLG). In addition, the Respondents shall keep copies

of all documents relating to compliance with the operating parameters limits not monitored by the CPMS, and all other documents relating to compliance with Section III of this CAFO. All records, including electronic records, shall be kept for a period of one year after termination of the CAFO. These monitoring and recordkeeping requirements are in addition to any other monitoring and/or recordkeeping requirements required by federal, state, or local laws, regulations, or permits. This information shall be made available to EPA and TCEQ upon request.

2. In addition, the Respondents shall preserve, for a period of one year after termination of the CAFO, all records and documents in its possession or in the possession of its divisions, employees, agents, contractors, or successors which in any way relate to this CAFO regardless of any document retention policy to the contrary. This information shall be made available to EPA and TCEQ upon request.

J. EPA Approval of Submissions

EPA will review the plans set forth in Paragraphs 69.A.11 (if applicable) and 69.C.2, and notify the Respondents in writing of EPA's approval or disapproval of the plan or any part thereof. Within the time specified, the Respondents shall address the deficiencies and submit a revised plan. EPA will approve, disapprove, or modify the revised submittal. EPA approved plans shall be incorporated by reference into this CAFO.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

70. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the

seriousness of the alleged violations, the Respondents' good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that the Respondent U.S. Ecology Texas, Inc. be assessed a civil penalty of **ONE HUNDRED SIXTY-FIVE THOUSAND, SIX HUNDRED FIFTY-SEVEN DOLLARS (\$165,657)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of **SIX HUNDRED TWENTY-TWO THOUSAND, FOUR HUNDRED SIXTY-THREE DOLLARS (\$622,463)**. The Respondent USET shall pay the assessed civil penalty within thirty (30) days of the effective date of this CAFO. The Respondent TD*X Associates L.P. shall pay the assessed civil penalty in four (4) payments as follows:

Payment No. 1: \$157,978.35 within thirty (30) days of the effective date of this CAFO.

Payment No. 2: \$157,978.35 (\$153,268.99 civil penalty plus interest of \$4,709.36) within one year of the effective date of this CAFO.

Payment No. 3: \$157,978.35 (\$154,822.97 civil penalty plus interest of \$3,155.38) within two years of the effective date of this CAFO.

Payment No. 4: \$157,978.34 (\$156,392.69 civil penalty plus interest of \$1,585.65) within three years of the effective date of this CAFO.

71. The Respondents shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"ID 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket numbers RCRA-06-2012-0936 (Respondent USET) and RCRA-06-2012-0937 (Respondent TD*X) shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondents shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-11E)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondents' adherence to this request will ensure proper credit is given when penalties are received in the Region.

72. The Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

73. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

74. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a

penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

75. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. ADDITIONAL REQUIREMENTS

76. The Respondents shall undertake the following additional requirements:

A. The Respondents agree that the oil reclamation unit and the TDU are subject to the requirements of 40 C.F.R. Part 61, Subpart FF.

B. Within thirty (30) days of the effective date of the CAFO, the Respondents shall submit to EPA a certification that the following equipment in the oil reclamation unit and the TDU is not in “volatile hazardous air pollutant” (VHAP) service, as that term is defined by 40 C.F.R. § 61.241:

1. pumps;
2. compressors;
3. pressure relief devices;
4. sampling connection systems;
5. open-ended valves or lines;

6. valves;
7. connectors;
8. surge control vessels;
9. bottoms receivers; and
10. control devices and systems.

This certification shall be submitted in accordance with Paragraphs 76.H and 76.I.

C. Pursuant to 40 C.F.R. § 61.354(c), as of the effective date of this CAFO, the Respondents shall install, calibrate, maintain, and operate according to manufacturer's specifications, devices to continuously monitor the control devices operations required by 40 C.F.R. § 61.349.

D. Pursuant to 40 C.F.R. § 61.345(a), within 180 days of the effective date of the CAFO, the Respondents shall install, operate, and maintain covers on Bins 1, 2, 3, 4, and the Centrifuge solid bins that meet the requirements of 40 C.F.R. § 61.345(a)(1). The cover and openings shall be in a closed, sealed position at all times that waste is in the container except when it is necessary to use the opening for waste loading, removal, inspection or sampling, as required by 40 C.F.R. § 61.345(a)(1)(ii). The Respondents shall monitor the cover and all openings for no detectable emissions initially and thereafter at least once per year by the methods specified in 40 C.F.R. § 61.355(h).

E. The Respondents shall use a submerged fill pipe when transferring waste into the containers by pumping, as required by 40 C.F.R. § 61.345(a)(2).

F. Within ninety (90) days after the reconfiguration of the TDU pursuant to Paragraph 69.A.8 of this CAFO, the Respondents shall conduct performance tests for the TOU and the carbon adsorption system to demonstrate compliance with the requirements of 40 C.F.R.

§ 61.349. The performance tests shall be conducted in accordance with the requirements of 40 C.F.R. § 61.355. A copy of the performance test results shall be submitted to EPA within ninety (90) days of completion of the performance tests. The performance tests results shall be submitted in accordance with Paragraphs 76.H and 76.I.

G. Within 210 days of the effective date of the CAFO, the Respondents shall submit a written report to EPA showing compliance with Paragraphs 76.C, 76.D, and 76.E.

H. The certification and report identified in this Section must be accompanied by the following certification:

"I certify under penalty of law to the best of my knowledge and belief, that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondent(s) by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

I. The certification and report required under this Section shall be sent to the following:

Craig Lutz
Toxics Enforcement Section (6EN-A1)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

D. STIPULATED PENALTIES

77. In addition to any other remedies or sanctions available to EPA, the Respondent(s) shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

a. Failure to Timely Submit Reports or Plans - Paragraphs 69.A.11, 69.A.12, and 69.C.2

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 1,000
16th through 30th day	\$ 1,500
31st day and beyond	\$ 2,500

b. Failure to Comply with Certain Interim Operating Requirements – Paragraphs 69.A.5, 69.A.6, 69.A.7 (installation of AWFCO only), 69A.8, and 69.A.11

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 1,500
16th through 30th day	\$ 2,500
31st day and beyond	\$ 5,000

c. Failure to Comply with any Other Provision of Section III of this CAFO

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 500
16th through 30th day	\$ 1,000
31st day and beyond	\$ 1,500

d. Failure to Comply with Additional Requirements – Section IV.C

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 1,500
16th through 30th day	\$ 2,500
31st day and beyond	\$ 5,000

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

78. The Respondent(s) shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 71 herein. Interest and late charges shall be paid as stated in Paragraphs 73 - 74 herein.

79. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent(s) violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

E. DISPUTE RESOLUTION

80. If the Respondents object to any decision or directive of EPA in regard to Section III or IV.C, the Respondents shall notify each other and the following persons in writing of its objections, and the basis for those objections, within thirty (30) calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-II)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

81. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondents shall then have an additional thirty (30) calendar days from EPA's receipt of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondents, the agreement shall be reduced to writing and signed by the Associate Director and the Respondents and incorporated by reference into this CAFO.

82. If no agreement is reached between the Associate Director and the Respondents within that time period, the dispute shall be submitted to the Director of the Compliance

Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondents shall then have a second 30-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, the resolution shall be reduced to writing and signed by the Division Director and the Respondents and incorporated by reference into this CAFO. If the Division Director and the Respondents are unable to reach agreement within this second 30-day period, the Division Director shall provide a written statement of EPA's decision to the Respondents, which shall be binding upon the Respondents and incorporated by reference into the CAFO.

83. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.H (Modifications).

84. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way, any obligations of the Respondents under this CAFO, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute. If the Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IV.D.

F. FORCE MAJEURE

85. A "force majeure event" is any event beyond the control of the Respondents, their contractors, or any entity controlled by the Respondents that delays the performance of any obligation under this CAFO despite the Respondents' best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting

delay to the greatest extent possible. "Force Majeure" does not include the Respondents' financial inability to perform any obligation under this CAFO, but does include any delays attributable to the TCEQ's permitting process and the conduct of the contested case hearing.

86. The Respondents shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event. The Respondents shall also provide written notice, as provided in Section IV.G of this CAFO, within seven days of the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the Respondents' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and the Respondents' rationale for attributing any delay to a force majeure event. Failure to give such notice shall preclude the Respondents from asserting any claim of force majeure.

87. The Respondent also shall provide notice orally or by electronic or facsimile transmission to the other Respondent not later than 24 hours after the time Respondent first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event, provided that the failure to give such notice shall not limit either Respondent's responsibilities under this CAFO.

88. If the Complainant agrees that a force majeure event has occurred, the Complainant may agree to extend the time for the Respondents to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other

obligation. Where the Complainant agrees to an extension of time, the appropriate modification shall be made pursuant to Section IV.H of this CAFO.

89. If the Complainant does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Respondents, the Complainant's position shall be binding, unless the Respondents invokes Dispute Resolution under Section IV.D of this CAFO. In any such dispute, the Respondents bear the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the Respondents gave the notice required by the paragraph above, that the force majeure event caused any delay the Respondents' claimed was attributable to that event; and that the Respondents exercised their reasonable best efforts to prevent or minimize any delay caused by the event. If the Respondents carry this burden, the delay at issue shall be deemed not to be a violation of the affected obligation of this CAFO.

G. NOTIFICATION

90. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

Complainant:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent U.S. Ecology Texas, Inc.:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

Respondent TD*X Associates, L.P.:

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

Texas Commission on Environmental Quality

Section Manager
Industrial and Hazardous Permits Section
Waste Permits Division
Texas Commission on Environmental Quality
P.O. Box 13087 MC 130
Austin, TX 78711

H. MODIFICATION

91. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

I. RETENTION OF ENFORCEMENT RIGHTS

92. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

93. Except as herein provided, nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous

substances, pollutants, contaminants, hazardous substances on, at or from the Respondent USET's facility or Respondent TD*X's oil reclamation unit and related equipment.

Furthermore, nothing in this CAFO shall be construed or to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

94. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. This CAFO shall not be construed to limit the rights of the EPA or United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

95. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other appropriate relief relating to this Facility or the oil reclamation unit, the Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to this CAFO.

96. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant does not warrant or aver in any manner that the Respondents' compliance with any aspect of this

CAFO will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

J. INDEMNIFICATION OF EPA

97. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondents, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondents in carrying out the activities required by this CAFO.

K. COSTS

98. Each party shall bear its own costs and attorney's fees. Furthermore, each Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

L. TERMINATION

99. At such time as the Respondents believe they have completed all of the requirements of this CAFO, they may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondents have been notified by the EPA in writing that this CAFO has been satisfied and terminated.


M. EFFECTIVE DATE

100. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: 9/27/12


US Ecology Texas, Inc.

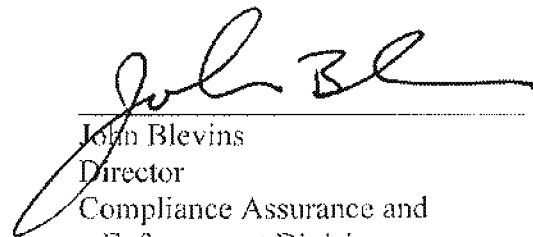
FOR THE RESPONDENT:

Date: September 26, 2012

Carl R. Palmer
TD*X Associates L.P.

FOR THE COMPLAINANT:

Date: 10.03.12

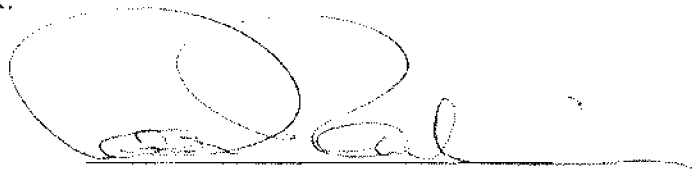


John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive relief or other equitable relief for criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondents' (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondents are ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 10/4/12

A handwritten signature in black ink, appearing to read 'Patrick Rankin', is written over a horizontal line.

Patrick Rankin
Regional Judicial Officer

APPENDIX 1 – OPERATING PARAMETERS

TABLE A

TDU OIL RECLAMATION SYSTEM INTERIM REQUIREMENTS PRIOR TO TDU INSTALLATION

Tag No.	Equipment Operating Parameter	Operating Parameter Limit	Compliance Basis
TT-18/19	TDU Dryer, Minimum Combustion Chamber Temperature	Maintain Temperature > 1,400°F	AWFCO: CPMS ¹ , 60-sec time delay
PT-1	TDU Dryer, Maximum Internal Pressure	Maintain Pressure < 0.00" W.C.	AWFCO: CPMS, 6-min Rolling Average (RA) ²
OE-1	Purge Vent Gas Stream Maximum O ₂ Concentration	O ₂ < 7%	AWFCO: CPMS, 60-sec time delay
FE-101	Maximum Purge Vent Rate	Purge Vent Rate < 180 scfm	AWFCO: CPMS, Hourly Rolling Average (HRA) ³
M-100	Minimum Percent Excess Air, Operation of Purge Vent Injector Air Supply	Purge Vent Air Supply > 20% Excess Air	AWFCO: CPMS, Tuning of Combustion Airflow
TE-28	Maximum Condenser System Exhaust Temperature	Temperature < 120°F	AWFCO: CPMS, HRA
	HEPA Filter Installed and Pressure Change Monitored to Ensure Integrity of Filter	Installed and Δ Pressure Monitoring	Installation Check; Δ Pressure Monitored Once Per Shift
	Maximum TDU Feed Mercury Concentration	[Hg] < 50 ppm/Bin	Blending Protocols & Documentation ⁴
	Maximum TDU Feed Organic Halide Concentration	[Total Organic Halides] < 1,500 ppm/Bin	Blending Protocols & Documentation

¹ Continuous Process Monitoring System – See Paragraph 69.I of CAFO.

² Previous six 1-minute readings are summed and divided by six.

³ 40 C.F.R. §§ 63.1209(b)(5).

⁴ See Paragraph 69.A.3 of the CAFO.

TABLE B

**TDU OIL RECLAMATION SYSTEM REQUIREMENTS AFTER TOU INSTALLATION
PRE-COMPLIANCE DEMONSTRATION TEST OPERATIONS**

Tag No.	Equipment Operating Parameter	Shakedown (Pre-Test) OPL	Compliance Basis
PT-1	TDU Dryer, Maximum Internal Pressure	Maintain Pressure < 0.00" W.C.	AWFCO: CPMS ⁵ , 6-min RA ⁶
M-05	TDU Dryer, Cylinder Rotation On	Motor Operating	AWFCO: CPMS, Instantaneous
M-18	Product Discharge System	Motor Operating	AWFCO: CPMS, Instantaneous
M-21	Recirculation Blower Operating	Motor Operating	AWFCO: CPMS, Instantaneous
TT-121	TOU, Minimum Combustion Chamber Temperature	Maintain Temperature > 1,400°F	AWFCO: CPMS, HRA ⁷
KY-110	TOU, Minimum Residence Time (Calculated from Purge Vent Flow Rate, Exhaust T, and Air Ratio)	Residence Time > 0.5 seconds	AWFCO: CPMS, HRA
AE-5/ OE-5	TOU Exhaust Gas, Maximum CO Concentration	[CO] < 100 ppmV @ 7% O ₂	AWFCO: CEMS for CO, HRA
OE-1	Purge Vent Gas Stream, Maximum O ₂ Concentration	[O ₂] < 7%	AWFCO: CPMS, Instantaneous
FE-101	Maximum Purge Vent Rate	Vent Flow < 250 scfm	AWFCO: CPMS, HRA
FCV-102	Valve Position to Ensure Purge Vent is not Directed Away from TOU	Valve Closed	AWFCO: CPMS, 60-sec delay
M-121	Minimum Percent Excess Air, Operation of Purge Vent Injector Air Supply	Purge Vent Air Supply > 20% Excess Air	AWFCO: CPMS, Tuning of Combustion Airflow
TE-28	Maximum Condenser System Exhaust Temperature	Maintain Temperature < 120°F	AWFCO: CPMS, HRA

⁵ Continuous Process Monitoring System – See Paragraph 69.I of the CAFO.

⁶ Previous six 1-minute readings are summed and divided by six.

⁷ 40 C.F.R. §§ 63.1209(a)(6) and 63.1209(b)(5).

	HEPA Filter Installed and Pressure Change Monitored to Ensure Integrity of Filter	Installed and Δ Pressure Monitoring	Installation Check; Δ Pressure Monitored Once Per Shift
	Maximum TDU Feed Mercury Concentration	[Hg] < 50 ppm/Bin	Blending Protocols & Documentation ⁸ , Feed Stream Analysis Plan (if applicable) ⁹
	Maximum TDU Feed Organic Halide Concentration	[Total Organic Halides] < 1,500 ppm/Bin	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)
	Maximum TDU Feed Semi-Volatile Metals Concentration ¹⁰	N/A	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)
	Maximum TDU Feed Low-Volatile Metals Concentration ¹¹	N/A	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)

⁸ See Paragraph 69.A.3 of the CAFO.

⁹ See Paragraph 69.A.11 of the CAFO.

¹⁰ Semi-volatile metals means a combination of cadmium and lead.

¹¹ Low-volatile metals means a combination of Arsenic, Beryllium, and Chromium.

TABLE C

**TDU OIL RECLAMATION REQUIREMENTS AFTER TOU INSTALLATION
POST-COMPLIANCE DEMONSTRATION TEST OPERATIONS**

Tag No.	Equipment Operating Parameter	Interim/Final (Post-Test) OPL	Compliance Basis
PT-1	TDU Dryer, Maximum Internal Pressure	Maintain Pressure < 0.00" W.C.	AWFCO: CPMS ¹² , 6-min RA ¹³
M-05	TDU Dryer, Cylinder Rotation On	Motor Operating	AWFCO: CPMS, Instantaneous
M-18	Product Discharge System	Motor Operating	AWFCO: CPMS, Instantaneous
M-21	Recirculation Blower Operating	Motor Operating	AWFCO: CPMS, Instantaneous
TT-121	TOU, Minimum Combustion Chamber Temperature	OPL Established @ > 3-Run Average from CDT	AWFCO: CPMS, HRA ¹⁴
KY-110	TOU, Minimum Residence Time (Calculated from Purge Vent Flow Rate, Exhaust T, and Air Ratio)	Residence Time > 0.5 seconds	AWFCO: CPMS, HRA
AE-5/ OE-5	TOU Exhaust Gas, Maximum CO Concentration	Semi-Annual Testing until Waste Analysis Plan Approved, then Annual Testing	Performance Testing in lieu of CEMS; Waste Analysis Plan based with other OPLs
OE-1	Purge Vent Gas Stream, Maximum O ₂ Concentration	[O ₂] < 7%	AWFCO: CPMS, Instantaneous
FE-101	Maximum Purge Vent Rate	Vent Flow < 250 scfm	AWFCO: CPMS, HRA
FCV-102	Valve Position to Ensure Purge Vent is not Directed Away from TOU	Valve Closed	AWFCO: CPMS, 60-sec time delay
M-121	Minimum Percent Excess Air, Operation of Purge Vent Injector Air Supply	Purge Vent Air Supply > 20% Excess Air	AWFCO: CPMS, Tuning of Combustion Airflow

¹² Continuous Process Monitoring System – See Paragraph 69.I of CAFO.

¹³ Previous six 1-minute readings are summed and divided by six.

¹⁴ 40 C.F.R. §§ 63.1209(a)(6) and 63.1209(b)(5).

TE-28	Maximum Condenser System Exhaust Temperature	OPL Established @ < 3-run Average Based on CDT	AWFCO: CPMS, HIRA
	HEPA Filter Installed and Pressure Change Monitored to Ensure Integrity of Filter	Installed and Δ Pressure Monitoring	Installation Check; Δ Pressure Monitored Once Per Shift
	Maximum TDU Feed Mercury Concentration	[Hg] < 50 ppm/Bin	Blending Protocols & Documentation ¹⁵ , Feed Stream Analysis Plan (if applicable) ¹⁶
	Maximum TDU Feed Organic Halide Concentration	OPL Established as Measured Ratio ¹⁷	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)
	Maximum TDU Feed Semi-Volatile Metals Concentration ¹⁸	OPL Established as Measured Ratio ¹⁹	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)
	Maximum TDU Feed Low-Volatile Metals Concentration ²⁰	OPL Established as Measured Ratio ²¹	Blending Protocols & Documentation, Feed Stream Analysis Plan (if applicable)

¹⁵ See Paragraph 69.A.3 of the CAFO.

¹⁶ See Paragraph 69.A.11 of the CAFO.

¹⁷ Maximum TDU Feed Concentration established as a measured ratio (not to exceed 4000 ppm/bin) from emissions data collected during CDT. See plan example calculations.

¹⁸ Semi-volatile metals means a combination of cadmium and lead.

¹⁹ Maximum TDU Feed Concentration established as measured ration from emissions data collected during CDT. See plan example calculations.

²⁰ Low-volatile metals means a combination of Arsenic, Beryllium, and Chromium.

²¹ Maximum TDU Feed Concentration established as measured ratio from emissions data collected during CDT. See plan example calculations.

APPENDIX 2 – BLENDING PROTOCOLS

**CONTAINS CONFIDENTIAL BUSINESS
INFORMATION**

DOCUMENT STORED IN FILE ROOM

APPENDIX 3

COMPLIANCE DEMONSTRATION TEST PLAN

**CONTAINS CONFIDENTIAL BUSINESS
INFORMATION**

DOCUMENT STORED IN FILE ROOM

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of October, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that true and correct copies of the CAFO were sent to the following by the method indicated below:

For US Ecology Texas, Inc.

Certified Mail – Return Receipt Requested – 7007 0710 0002 1385 1491

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue, Suite 2100
Austin, Texas 78701

For TD*X Associates LP

Certified Mail – Return Receipt Requested – 7007 0710 0002 1385 1507

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 155, OAW-150
Seattle, WA 98101-3123

OFFICE OF
AIR AND WASTE

SEP 21 2018

Mr. David Anderson
Oregon Department of Environmental Quality
Eastern Region, Bend Office
475 NE Bellevue Drive, Suite 110
Bend, Oregon 97701

Re: Class 3 Permit Modification Request for Incorporation of the Organic Recovery Unit 2 Tanks
into the Chemical Waste Management of the Northwest Hazardous Waste Permit
ORD 089 452 353

Dear Mr. Anderson:

The U.S. Environmental Protection Agency, Region 10, appreciates the opportunity to comment on the Oregon Department of Environmental Quality's tentative decision to approve the Class 3 Permit Modification Request for incorporation of the Organic Recovery Unit 2 Tanks into the Chemical Waste Management of the Northwest Hazardous Waste Permit. As you know, the question of how RCRA regulations apply to hazardous waste recycling operations that utilize Thermal Desorption Units and condensers is a complicated one that depends on a number of site-specific factors.

The EPA is aware that issues of national consistency have been raised by interested parties and has been studying this issue to determine whether national guidance on TDUs is needed. Without national guidance, I want to be sure that you are aware of the attached letter dated May 2, 2016, from the EPA, Region 6, to J. D. Head. Additionally, have you considered whether a 40 C.F.R. Part 264, Subpart X permit would be appropriate in this case? Because Subpart X permits are performance-based, permit conditions can be tailored to provide additional protections as needed while also granting flexibilities when warranted.

If you have any questions please contact me or Heather Valdez of my staff, at 206-553-6220 or valdez.heather@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa McArthur", is written over a circular stamp. The stamp contains the text "Lisa McArthur" and "Manager, RCRA Corrective Action, Permits and PCB Unit".

Lisa McArthur
Manager, RCRA Corrective Action, Permits and
PCB Unit